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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes	)	CC Docket No. 92-133

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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Summary

MCI Telecommunications Corporation (MCI) supports the Commission's efforts to simplify its Part 65 rate-of-return (ROR) represcription procedures, but the Commission must also be careful not to allow such procedural simplification to burden or otherwise infringe on ratepayers' abilities to probe and respond to the local exchange carriers' (LECs') presentations in such proceedings.

A key assumption underlying this proceeding is that the ROR represcription procedures to be adopted here will not be incorporated into the sharing mechanism and lower adjustment mark of the LEC price cap scheme. It is difficult to understand why a ROR prescribed under these procedures would not play such a role in the future, since the current authorized ROR was used to establish the current price cap sharing zones and lower adjustment mark. The procedures to be adopted here thus might affect the RHCs and other price cap LECs, albeit indirectly, which should be taken into account in determining the methodologies to be applied in ROR represcription proceedings.

The most appropriate "trigger" mechanism for initiating represcription proceedings would probably be certain specified changes in a combination of measures (e.g., long-term interest rates) over a specified period of time (perhaps six months) that should signal a significant change in capital costs. The triggering events would establish a presumption that a represcription proceeding should be conducted, and the Commission

could then hold a short trigger notice and comment proceeding to determine whether there was any reason not to hold a represcription proceeding. In order to ensure rate stability, the Commission could provide that there be at least a one year period between the last represcription order and the commencement of a new represcription proceeding.

MCI agrees that modified notice and comment procedures, with full disclosure of relevant material, would be adequate to resolve the types of economic issues raised in ROR represcription proceedings. The Commission could safely dispense with the notices of appearances, proposed findings and conclusions and reply findings and conclusions required by the current rules, as well as the use of separated trial staff. At the same time, however, it must be kept in mind that, because of the complexities in estimating the cost of capital of interstate access services, particularly the cost of equity component, a ROR represcription proceeding is a much more focused, fact-intensive and adversarial proceeding than the typical notice and comment rulemaking. The procedures to be adopted herein therefore must not magnify the advantages enjoyed by the LECs, whose interests are identical and which have a built-in coordination advantage over ratepayers in represcription proceedings.

Accordingly, in order to give ratepayers an adequate opportunity to "catch up" to the LECs, parties must have at least six weeks -- following the LECs' submission of required data -- to file their initial comments and another six weeks for reply

comments, whether or not the LECs need that much time. Moreover, because of the complexity of cost of capital issues, parties will need to file rebuttal comments in order to address challenges in others' replies to their initial approaches to such issues. Parties should have four weeks to file rebuttal comments.

Because of the need to reply to all of the LECs' theories and methodologies in support of their coordinated case, the page limit for replies should be no lower than the limit for initial comments, and should probably be greater. A limit of 50 pages for initial comments therefore would require a limit of at least 50 pages for reply comments. Rebuttal comments could be kept to 35 pages. If experts' affidavits and supporting data and charts were to count toward those page limits, the limits would have to be raised substantially.

Automatic disclosure of all financial analysts' reports and other data upon which party relies in its pleadings will eliminate much of the need for discovery in represcription proceedings and will greatly reduce the burden of such proceedings. Such automatic disclosure should include all statistical analyses, in both hard copy and machine-readable form, supporting a party's or expert's presentation and all raw data underlying such analyses. Even with such automatic disclosure of all cited sources and assuming full use of Bureau information requests in represcription proceedings, however, discovery will still be necessary. Moreover, the use of interrogatories should continue to be allowed, not only to

properly identify documents obtained through production requests, but also to limit a party's claims or proof.

MCI agrees that the Commission's Part 65 Rules should continue to allow flexibility in the use of different techniques to estimate the cost of equity component of the cost of capital. The Commission should not restrict, in the Rules, its discretion to accord weight to one or more cost of equity methodologies during a future represcription proceeding. Thus, the Commission should not decide now on the appropriate surrogate for LEC interstate access services or commit itself to any particular "benchmark" comparison. The Commission certainly should not incorporate any particular risk premium analysis or approach in its Part 65 Rules. Parties should be free to argue for or against any or all of these or other approaches in the future. It is clear, however, that Section 65.400 of the Rules should be repealed, since there is no way to identify, ahead of time, criteria that will always select a set of firms "comparable to" LEC interstate access services. The "classic" DCF formula should continue to be used in represcription proceedings, and in the same way as it was applied in the 1990 Represcription Order.

The Commission should not commit itself as to the best measure of the cost of debt or the appropriate capital structure for determining the cost of capital until it decides on the potential impact of the ROR. As a compromise, the most appropriate average measures may be the embedded cost of debt and the capital structure of holding companies owning LECs that earn

revenue of $100 million or more annually, including the RHCs.

The Commission should repromulgate the "automatic refund rule" in its original form, including the requiring of refunds by service category. Given the large number and relatively small size of most of the non-price cap LECs, the tariff review and formal complaint processes will be extremely unwieldy and inefficient tools for enforcing the ROR prescription. Moreover, in light of the Commission's clarification, in the 1990 Represcription Order, of its understanding of the ROR prescription requiring refunds by service category would not run afoul of the Automatic Refund Decision. Even if such refunds were to drive a LEC below the prescribed ROR, the latter is not a minimum, only a maximum, and there is a "substantial gap" between the prescribed ROR and a confiscatory level of earnings.

Although the automatic refund rule previously permitted the LECs to make refunds either through prospective rate reductions or direct payments to access customers, it would be preferable to require direct payments. Because of the inherent difficulty of forecasting demand and other factors, it is virtually impossible to know whether a given refund has actually been carried out through a rate reduction, necessitating burdensome monitoring by the Commission of all of the non-price cap LECs making such refunds. Direct payments thus would be a more effective and efficient refund remedy.

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Amendment of Parts 65 and 69 of	)	
the Commission's Rules to Reform	)	
the Interstate Rate of Return	)	CC Docket No. 92-133
Represcription and Enforcement	)	
Processes	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking (NPRM) initiating this proceeding. As one of the key ratepayer participants in the Commission's most recent rate-of-return (ROR) represcription proceeding (the 1990 Represcription Proceeding),[1/] and as the second largest user of the interstate access services of the local exchange carriers (LECs), MCI has a vital interest in the Commission's ROR represcription procedures and methodologies, and it has the experience necessary to offer procedural suggestions that will ensure fairness and administrative efficiency.

MCI agrees with the Commission's overall goal of simplifying the ROR represcription procedures in Part 65 of the Commission's Rules, but the Commission must also be very careful not to infringe ratepayers' rights to challenge the LECs' represcription

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[1/] Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, 5 FCC Rcd 7507 (1990) (1990 Represcription Order), recon. denied, 6 FCC Rcd 7193 (1991) (1990 Represcription Reconsideration Order), petitions for review docketed sub nom., Illinois Bell Telephone Co., et al. v. FCC, No. 91-1020 (D.C. Cir. filed January 11, 1991).

presentations in the most effective manner possible. A determination of carriers' cost of capital is an inherently complex undertaking and can only be simplified to a certain extent without injuring ratepayers' interests. The Commission should be wary of any LEC attempts to restrict, in the name of "reform," ratepayers' abilities to probe and respond to the LECs' presentations in represcription proceedings.

Introduction

One of the central tenets of the NPRM, and upon which many of its proposals are predicated, is that, in the future, any LEC ROR represcription procedures will only be applied to the LECs still subject to ROR regulation, "which provide only a small portion of LEC interstate access service."[2/] Based on that assumption, the Commission proposes that its represcription procedures be simplified.[3/] Although there are other good reasons to simplify the procedures, this particular rationale might not be valid. The authorized ROR prescription still plays a vital role in the Commission's LEC price cap regulation regime.[4/] Both the "sharing" mechanism and the "lower adjustment

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2/ NPRM at ¶ 16.

3/ Id.

4/ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (LEC Price Cap Order), modified on recon., 6 FCC Rcd 2637 (1991), petitions for further recon. dismissed, 6 FCC Rcd 7482 (1991), further modified on recon., 6 FCC Rcd 4524 (1991) (ONA/Part 69 Order), petitions for recon. of

(continued...)

mark" are pegged to the authorized ROR.[5/] Although the Commission intends to use the current authorized ROR, established in the 1990 Represcription Order, during the initial four years of the LEC price cap regime, it has suggested that different "earnings levels" might be used under "compelling" circumstances.[6/]

Thus, if it became clear that the cost of capital of interstate access operations had changed, and a new ROR were prescribed, the sharing mechanism and lower adjustment mark might be adjusted to be consistent with the new authorized ROR. Given the Commission's historical practice of prescribing a unitary ROR and the tremendous amount of Commission and industry time and resources taken up in any represcription proceeding, it is highly doubtful that a separate set of procedures would be established to derive an authorized ROR for price cap sharing and lower adjustment mark purposes, different from the ROR set under Part 65 for ROR-regulated LECs. Such multiple authorized ROR levels would require virtually continual ROR represcription proceedings.

[4/](...continued)
ONA/Part 69 Order pending, appeals of LEC Price Cap Order docketed sub nom. District of Columbia Public Service Commission v. FCC, No. 91-1279 (D.C. Cir. filed June 14, 1991).

[5/] 5 FCC Rcd at 6801-02, 6805-07, ¶¶ 123-25, 127, 156-65.

[6/] Id. at 6802, ¶ 129.

Similarly, following the initial four year LEC price cap review period,[7] it is quite conceivable that the sharing mechanism and lower adjustment mark could be adjusted to reflect changes in the cost of capital. Again, it is extremely unlikely that the Commission would establish new represcription procedures for this purpose alone. It is much more reasonable to assume that the new sharing zones and lower adjustment mark would be based on the then-current ROR established under the Part 65 procedures to be established in this proceeding, just as the LEC Price Cap Order pegged the current sharing mechanism and lower adjustment mark to the ROR established simultaneously in the 1990 Represcription Order. It is likely, therefore, that the procedures established in this proceeding will have an impact on the entire interstate access industry, not just the ROR-regulated LECs.[8] The Commission should therefore be careful not to cut any corners on the assumption that the impact of these procedures will be limited, and it should maintain a flexible approach as to the methodologies to be applied in ROR represcriptions to accommodate the potentially broad application of the resulting ROR that is prescribed.

A. Initiating Represcription Proceedings

MCI agrees that some type of "trigger" mechanism should be

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[7] Id. at 6834-35, ¶¶ 385-94.

[8] It is not clear, therefore, why the Commission assumes in the NPRM, at ¶ 83 n.92, that "any future represcription would not affect the sharing zones for price cap LECs."

substituted for the biennial proceedings now required by Part 65.[9/] As the Commission notes, the cost of capital does not follow the calendar.[10/] On the other hand, there is probably no good single measure that could be used as an "automatic" trigger. Interest rates, for example, would not have been a useful trigger for the 1990 Represcription Proceeding, since they did not signal the decline in capital costs that occurred between the 1986 Represcription Order[11/] and 1990 Represcription Order.[12/] The LECs would certainly agree that the precipitous decline in interest rates since the 1990 Represcription Order would not have served as a useful single trigger for another represcription proceeding.

The best type of trigger would probably be a "semi-automatic" trigger, based on changes in a combination of measures (e.g., long-term interest rates and the Regional Holding Companies' (RHCs') Discounted Cash Flow (DCF) cost of equity estimates) over a certain period of time. For example, the Commission might establish, as the triggering events, a significant change (e.g., two percentage points) in certain long-

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9/ See NPRM, ¶¶ 19-26.

10/ Id. at ¶ 21.

11/ Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, Phase III, 51 Fed. Reg. 32920 (Sept. 17, 1986) (1986 Represcription Order), recon. denied, 2 FCC Rcd 5636 (1987).

12/ See 1990 Represcription Order, 5 FCC Rcd. at 7527, ¶ 173.

term interest rates combined with a significant change (e.g., one percentage point) in the RHCs' average DCF, both continuously and simultaneously over at least a six month period. Once both measures had registered the required six-month change from the levels those measures registered during the period of the most recent represcription, the Commission could then determine whether a represcription proceeding was necessary in a short notice and comment proceeding. The Commission could initiate that "trigger" proceeding with a notice setting out the data demonstrating the triggering events and seeking comments in two weeks and reply comments in another week.

The measures used should be required to register specified changes for at least six months in order to ensure that such changes are truly significant and not merely temporary fluctuations. The Commission could state in Part 65 that the triggering events establish a presumption that there should be a represcription proceeding unless commenters in the trigger proceeding can demonstrate that financial and other economic circumstances are so unusual that the measures used as the trigger do not reflect actual changes in the cost of capital of providing interstate access services. It should not be difficult for the Commission to determine whether or not comments opposing a represcription proceeding had satisfied such a stringent burden.

The Commission should also state, in Part 65, that its finding in the trigger proceeding that a represcription proceeding is necessary does not establish a presumption in the represcription proceeding itself that capital costs have changed or what the current cost of capital is. The represcription proceeding should determine those issues de novo, although, of course, parties may use the same studies and cite the same arguments in both the trigger proceeding and represcription proceeding.

In order to ensure stability in access rates, there should be a minimum of a one year period between the last represcription order and the commencement of a new represcription proceeding, even if apparent changes in capital costs would otherwise have required a represcription proceeding. There should also be a determination every six months (except for the six month anniversary of the most recent represcription order), as to whether the triggering events have occurred, so that there is no more delay in initiating a represcription proceeding than is necessary to ensure that the changes being monitored are significant and not temporary fluctuations.

Thus, the first monitoring of the triggering measures following any represcription order would be conducted on the one year anniversary of the order, at which time the Commission would check on possible changes in those measures during the most

recent six months. Thereafter, a similar determination would be made every six months until there was a finding that the triggering events had occurred, necessitating a short trigger proceeding. If it were determined in that proceeding that a represcription proceeding should not be conducted, the monitoring process would continue at six month intervals until a represcription proceeding was conducted, starting this cycle again.

The Commission might also want to consider the possibility of a provision allowing petitions to be filed, anytime after the first anniversary of the most recent represcription order, to initiate a represcription proceeding on the basis of capital market developments other than the triggering events. It may be that the particular measures selected in this proceeding as the triggering events for some reason fail to reflect a significant change in capital costs at some point in the future that would justify a represcription proceeding. A petitioner might demonstrate other factors that arguably signal such a change, and the Commission might then put such a petition on public notice, seeking comments on a schedule similar to the trigger notice and comment proceeding discussed above. The only difference would be that the petitioner (and other parties supporting petitioner) would bear the burden of demonstrating that a represcription proceeding should be held. An order finding that such a

proceeding should be held, however, still should not establish a presumption in the represcription proceeding itself.

B. Conduct of Represcription Proceedings

1. Introduction

MCI agrees that modified notice and comment procedures, with full disclosure of relevant material, would be perfectly adequate to resolve the types of industry-wide economic issues raised in ROR represcription proceedings.[13/] The current quasi-adjudicative "paper" procedures reflect the worst of all worlds -- the cumbersomeness of unnecessary adjudicative machinery combined with the multi-party duplication of notice and comment rulemakings. The multiple, duplicative briefings required by the current rules also compound the burden of represcription proceedings, without adding significantly to the value of the parties' pleadings. MCI accordingly agrees that the Commission should eliminate the notices of appearance, proposed findings and conclusions and reply findings and conclusions required by the current rules, as well as the use of separated trial staff.[14/]

The elimination of these superfluous pleadings and procedures, however, should not be carried over to filings and procedures that are necessary to resolve the types of issues raised in ROR represcription proceedings. Although the

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[13/] NPRM at ¶¶ 27-31.

[14/] Id. at ¶ 30.

Commission can certainly eliminate much of the adjudicative paraphernalia that now unnecessarily complicates ROR proceedings, it is important to keep in mind that disputes over the cost of equity make a ROR represcription much more of a focused, adversarial proceeding than the typical regulatory policy rulemaking. Typically, the LECs, whose interests are identical, argue for the application of methodologies resulting in higher cost of equity estimates, while ratepayer parties apply methodologies yielding lower estimates. The parties' "comments" will therefore tend to resemble briefs and/or evidentiary presentations in adjudicative proceedings more than rulemaking comments. The procedures to be adopted in this docket must recognize and take account of the adversarial, fact-intensive nature of these disputes.

2. The Pleading Cycle

As discussed above, the Commission should determine whether a represcription proceeding is necessary in a short "trigger" notice and comment proceeding. If the Commission determines that a represcription proceeding is necessary, it could initiate such a proceeding in the same order by first requiring the LECs to submit the necessary data by a date certain (which data would depend on the methodologies to be used)[15/] and then setting out the comment schedule. In order to allow adequate time to prepare initial comments, there should be at least six weeks between the

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[15/] See discussion in Part C, infra.

filing of the LECs' data and the initial comments. There should also be another six weeks for reply comments.[16/]

MCI's proposed schedule is based on its experience as a member of the Consumer Coalition, which was the primary ratepayer participant in the 1990 Represcription Proceeding.[17/] There, under the current Part 65 procedures, the Coalition had less than six weeks to respond to the LECs' initial submissions.[18/] The Coalition found itself extremely handicapped by that schedule, and some of the same factors will burden the ratepayer parties under the proposed procedures unless they have sufficient time.

As pointed out above, a ROR represcription proceeding is essentially an adversarial dispute, albeit one that is capable of resolution using notice and comment rulemaking procedures. The LECs' interests are identical in such proceedings, and they have vast experience in coordinating their efforts in regulatory matters. By coordinating their efforts through the US Telephone Association (USTA), as they did quite effectively in the 1990 Represcription Proceeding, or some other representative entity,

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[16/] As explained below, there should also be a provision for rebuttal comments.

[17/] The Consumer Coalition consisted of the Consumer Federation of America, the Ad Hoc Telecommunications Users Committee and MCI.

[18/] The LECs' initial submissions were filed on February 16, 1990, and responses were filed on March 27, 1990. See 1990 Represcription Order, 5 FCC Rcd at 7507, ¶ 2.

such as the National Exchange Carrier Association (NECA), the LECs are able to bring tremendous resources to bear in such a proceeding. The LECs can monitor the triggering measures on an ongoing basis and, when it becomes clear that a represcription proceeding will be held, they can delegate different issues among themselves.

Ratepayers, however, are not similarly organized and, in order to present an effective case, they must coordinate on an ad hoc basis, as the Consumer Coalition did in the 1990 Represcription Proceeding. Since ratepayer parties are not already organized at the outset, any represcription proceeding inevitably requires some "catching up" on the part of ratepayers. In order to catch up sufficiently to participate on an even footing with the LECs, ratepayers will need six weeks from the filing of all necessary information to file their initial comments, in which they have to set forth their case. Because of the LECS' resources, uniformity of interests and built-in institutional coordination advantage, they may not require that long. If the Commission decides to adopt any type of simultaneous comment procedure, however, the ratepayers' preparation needs should be accommodated in order to ensure fairness.

Similar considerations require another six weeks for the preparation and filing of reply comments. As in the case of the

initial comments, the pacing consideration is the time it will take for the ratepayer parties to coordinate and prepare their pleadings. The LECs have an even greater advantage on the reply round than they do at the initial round. Due to the factors discussed above, the LECs are in a much better position to proffer alternative, but mutually reinforcing, theories supporting their desired outcome. Just as they did in the 1990 Represcription Proceeding, each of the LECs can devote considerable resources to a discrete theory or set of issues, all of which must be effectively disputed. Consumers, because of time and resource constraints, are not going to be able to present more than one or two fully-developed theories. Thus, on the reply round, all of the LECs can critique the consumers' one or two theories, while the consumers have to rebut each of the LECs' theories.[19/] Based on the Consumer Coalition's experience, the ratepayer parties will need at least six weeks to prepare responses to the LECs' initial comments. The Commission's

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[19/] For example, in the 1990 Represcription Proceeding, the Consumer Coalition presented a "classic" DCF approach in estimating cost of equity, using the RHCs as proxies for the interstate access services of the BOCs. The other ratepayer parties presented variations on the classic DCF model. See 1990 Represcription Order, 5 FCC Rcd at 7522, ¶¶ 125-29. The LECs thus were each able to devote their replies to different aspects of the DCF/RHC proxy approach. Id. at 7516-20, ¶¶ 77-79, 89-92, 97, 104-07.

The RHCs, meanwhile, presented a wide variety of approaches: a DCF model with a multi-stage growth estimate; various capital asset pricing models; and various comparable firm studies. Id. at 7521-25, ¶¶ 121, 135, 140-43, 149, 152. The Consumer Coalition had to address all of these approaches. Id. at 7521, 7523-25, ¶¶ 122, 136, 138, 145, 150-51, 154-57.

procedures should therefore allow six weeks for reply, whether or not the LECs need that much time.

Moreover, based on MCI's familiarity with the issues raised in the 1990 Represcription Proceeding, disputes over cost of equity methodologies and calculations are not likely to be successfully resolved in only two rounds of comments. Unlike a policy rulemaking, where comments and reply comments usually provide a sufficient record, the technical arguments raised in cost of equity disputes do not lend themselves to satisfactory resolution using only simultaneous comments and reply comments. It would be quite likely that the LECs and ratepayer parties would "talk past" each other in their simultaneous filings and fail to engage each other's approaches completely, leaving important points unanswered. In order to resolve such detailed, hotly contested issues, parties must be able to rebut each other's reply comments.

The Commission need not be concerned that rebuttal comments would merely rephrase the parties' initial comments. Based on the Consumer Coalition's experience in the 1990 Represcription Proceeding, it is much more likely that the complexity of cost of equity issues will require the parties to develop, in their rebuttal comments, new responses to others' replies. It would be almost impossible to anticipate, in the parties' presentations of cost of equity methodologies in their initial comments, the

challenges thereto that will be raised in others' reply comments. Those challenges will have to be probed in detail in rebuttal comments, since it typically will not be evident from a party's initial comments what that party's responses to others' replies would be. If rebuttal comments were permitted, no party could afford to "hold back" at any stage of the pleading cycle, thus ensuring that there would be no unanswered arguments.[20/] Without a rebuttal round, however, the Commission would be left with challenged methodologies on both sides, with no way of assessing the validity of the respective challenges or, accordingly, of choosing the appropriate methodology. Parties should have four weeks to file rebuttal comments.

Finally, because of the adversarial nature of represcription proceedings and the identity of the LECs' interests, the page limits proposed in the NPRM are unrealistic. With 50 pages for initial comments, the seven RHCs (if they participate) or any seven other LECs, for that matter, will have 350 pages to present what is essentially a single case, with alternative theories and supporting evidence, coordinated through USTA or NECA, just as in the 1990 Represcription Proceeding. An ad hoc ratepayer group such as the Consumer Coalition would then have to rebut the LECs'

[20/] "Holding back" was a problem in the 1990 Represcription Proceeding, since the LECs, but not the ratepayer parties, had a rebuttal round in the initial pleading cycle, requiring the Consumer Coalition to use its Proposed Findings of Fact and Conclusions to respond to the LECs' rebuttals. See Proposed Findings of Fact and Conclusions of the Consumer Coalition, filed in the 1990 Represcription Proceeding on July 2, 1992, at 1.

entire case in only 35 pages, one-tenth the number of pages. Ratepayers theoretically ought to be able to coordinate separate reply filings to overcome the artificially low page limit, but it would be fairer not to impose this additional administrative handicap on ratepayers in the first place.

Assuming that Section 1.48(a) of the Commission's Rules and Regulations is applicable to the revised represcription procedures, the harshness of the proposed page limits would be ameliorated somewhat. Typically, in ROR represcription proceedings, expert affidavits and supporting charts and data will constitute a significant portion of most parties' comments and replies. If those materials do not count toward the page limits, ratepayers will not be quite so disadvantaged by the proposed limits as they would be otherwise, but the LECs' similar ability to avoid the effects of the page limits will enable them to maintain a considerable advantage.

In order not to give the LECs too great an advantage, the page limit for replies therefore should be at least the same as, if not greater than, the limit on initial comments. Indeed, if the Commission were determined to impose 50 and 35 page limits on comments and reply comments, initial comments should be limited to 35 pages and replies to 50 pages. Parties, particularly the LECs, would then be forced to focus on their best theories in their initial comments, making it more possible for other parties

to reply to the different theories presented in a number of initial comments. If the Commission determines, however, that initial comments should be limited to 50 pages, replies should not be subject to a shorter limit. A reply of 50 pages should be sufficient to respond to a coordinated set of LEC comments of 50 pages each, assuming that any expert affidavits or supporting data would not be included in the page count.

Assuming the foregoing page limits on comments and replies, or some other combination that would allow ratepayers to present their case and to rebut the LECs' case effectively, rebuttals could be limited to 35 pages, exclusive of affidavits and other exhibits. Rebuttals will be more narrowly focused than comments or replies and thus can be shorter.

3. Discovery

MCI agrees that automatic disclosure of all financial analysts' reports and other data upon which a party relies in its comments, reply comments or rebuttal, simultaneous with the filing of such pleading, will eliminate much of the need for discovery in represcription proceedings and will greatly reduce the burden of such proceedings.[21/] Most of the significant discovery sought by the Consumer Coalition in the 1990 Represcription Proceeding was for reports and other documents cited by the LECs or their experts. It was a great burden and

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[21/] See NPRM at ¶ 35.

needless impediment to the development of the issues in that proceeding to have to request such material, rather than having such material filed automatically with the LECs' submissions.

Any such rule requiring the automatic filing of material cited or otherwise relied upon in a party's pleading should be stated as broadly as possible and should include all raw data and statistical analyses, in both hard copy and machine-readable form, supporting a party's or expert's presentation. In particular, where a party relies upon a statistical analysis of certain data chosen from a specified universe using specified criteria, the party relying on such an analysis must provide the data for the entire specified universe, so that its application of its stated criteria may be tested by others. For example, if a "cluster" analysis is performed on certain data for 20 companies selected by certain criteria from the Standard & Poor's 400, any party performing and/or relying on such an analysis should provide all of the same data for all 400 companies, not just the "cluster" of 20 companies. In the 1990 Represcription Proceeding the Consumer Coalition was forced to waste a great deal of its limited time requesting and then waiting for such data.[22/] Mandatory automatic disclosure of such material will allow the parties to more effectively present their arguments and supporting evidence and to probe others' presentations.

[22/] See, e.g., Request for Discovery at 7, filed by Consumer Coalition in 1990 Represcription Proceeding on March 2, 1990 (requesting data for USTA universe of 628 firms).